Filed 12/21/09 In re Rios CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re CARLOS RIOS	E047494
on Habeas Corpus.	(Super.Ct.No. INC070874)
	OPINION

APPEAL from the Superior Court of Riverside County. David B. Downing, Judge. Reversed with directions.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Heather Bushman and Lora Fox Martin, Deputy Attorneys General, for Plaintiff and Appellant.

Martin Kassman, under appointment by the Court of Appeal, for Defendant and Respondent.

Defendant, Carlos Rios, then an inmate at Ironwood State Prison,[1] petitioned the trial court for a writ of habeas corpus seeking reversal of a disciplinary action revoking 120 days conduct credit, imposed for possessing inmate-manufactured alcohol (pruno). The trial court granted the relief requested because there was no evidence defendant was connected to the pruno and defendant's cellmate admitted it was his. The Warden appeals, contending that the trial court did not properly apply the "some evidence" standard of review applicable to challenges of prison disciplinary actions on federal due process grounds. We reverse.

BACKGROUND

Defendant was committed to state prison for an aggregate term of seven years following his conviction for residential burglary. On October 30, 2006, a correctional officer conducted a "pruno sweep" of the housing unit. When he entered cell 106, assigned to defendant and his cellmate Gallegos, he immediately smelled the odor of inmate-manufactured alcohol. The fermented substance was in a clear plastic trash bag that was located inside a brown bag underneath the lower bunk. He examined the

[1] At the time of the rules violation, defendant was incarcerated at Ironwood. When he filed the petition for writ of habeas corpus, defendant was in custody at Sierra Conservation Center, of which D. Dexter was alleged to have been the Warden at the time the petition was filed. By the time the return to the order to show cause was filed, defendant was alleged to have been transferred to Ironwood State Prison, so the return was made on behalf of Warden Debra Herndon. Appellant's Opening Brief was filed on behalf of Ivan D. Clay, Warden of Sierra Conservation Center. Frank X. Chavez is now the Warden.http://www.cdcr.ca.gov/Visitors/Facilities/SCC.html [as of Dec. 10, 2009].) Penal Code section 1477 requires a writ of habeas corpus to be directed to the person having custody of or restraining the person on whose behalf the application is made, so we substitute his name as appellant.

substance, which had a strong pungent odor, and verified that the substance was alcohol after consulting another correctional officer.

Defendant denied knowledge that the pruno was in the cell because he was at work at the time of the cell search, and asserted his cellmate had access to the cell while he was at work. Defendant stated his cellmate acknowledged the pruno was his. However, the correctional officer reported it could not be concealed without his knowledge because of the strong odor of fermentation and the small size of the cell. The container was located under defendant's bunk.[2] Since both defendant and his cellmate were at work assignments when the sweep was conducted and since prisoners go directly to work assignments after breakfast, the pruno had to be under defendant's bunk before he left the cell in the morning.

A rules violation report was made, and a hearing was held. Defendant did not call or request the presence of any witnesses at the hearing, but pled not guilty. He made the statement that he did not know about the substance because he was at work and his cellmate said it was apple juice. After the hearing, the hearing officer made a finding that the preponderance of the evidence supported the charge that defendant had violated Title 15 of the California Code of Regulations, section 3016, subdivision (a), for the unlawful possession of inmate manufactured alcohol. As a consequence, defendant forfeited 120 days of behavioral credits.

---

[2] Defendant was assigned to cell 106L, referring to the lower bunk, whereas Gallegos occupied 106U.

Defendant appealed the decision through two levels of administrative review, and both appeals were denied. Specifically, at the Director's Level Appeal, the reviewer found there was a preponderance of the evidence to support the finding and defendant waived his right to have witnesses present at the hearing. On September 24, 2007, defendant filed a petition for writ of habeas corpus claiming (1) there was no evidence to support the finding of guilt, and (2) his due process right to call witnesses at the hearing was denied. After a hearing following an order to show cause on the petition, the court granted the petition for writ of habeas corpus, ordered that 120 days of custody credits be restored to defendant, and directed that defendant be restored to A 1 A status. The Warden appealed.

DISCUSSION

The Warden contends the trial court's ruling was incorrect because there was "some evidence" to support the findings of the disciplinary fact finder. We agree.

When a superior court grants relief on a petition for habeas corpus without an evidentiary hearing, as happened here, the question presented on appeal is a question of law, which the appellate court reviews de novo. (*In re Lazor* (2009) 172 Cal.App.4th 1185, 1192; *In re Zepeda* (2006) 141 Cal.App.4th 1493, 1497 (*Zepeda*).) A disciplinary action will not be disturbed so long as "some evidence" supports the action taken. (*Superintendent v. Hill* (1985) 472 U.S. 445, 455 [105 S.Ct. 2768, 86 L.Ed.2d 356].) Ascertaining whether this standard has been satisfied does not require us to review of the entire record, make an independent assessment of the credibility of witnesses, or weigh the evidence. Instead, the question is whether there is *any evidence in the record* that

could support the conclusion reached by the disciplinary board. (*Id.* at pp. 455-456.) Thus, the usual deference given to the review of a trial court's ruling based on its superior ability to resolve factual questions—such as determining the credibility of witnesses—is unwarranted. (*In re Zepeda, supra,* at p. 1497.)

Because revocation of behavioral credits is not comparable to a criminal conviction, the fact that the evidence presented at the disciplinary hearing would be insufficient to form the basis for a criminal conviction does not require reversal of the discipline. (*In re Zepeda, supra*, 141 Cal.App.4th at p. 1499.) The trial court's task simply is to evaluate whether, given the documentary record summarizing the facts accepted by the parties, there is sufficient evidence to support the action taken. (*Id.* at p. 1497.) In other words, courts are not authorized to reverse prison disciplinary actions simply because, in the reviewing court's opinion, there is a realistic possibility the prisoner who has been disciplined was not guilty of the charged infraction. (*Superintendent v. Hill, supra,* 472 U.S. at pp. 447-448.) Disciplinary findings need not be supported by substantial evidence, but merely by "some" or "any" evidence. (*In re Jackson* (1987) 43 Cal.3d 501, 510; see also, *In re Rothwell* (2008) 164 Cal.App.4th 160, 165.)

In *Zepeda, supra,* the defendant was charged with possession of razor blades found in a paper medicine cup on top of a cement shelf, easily accessible to both inmates. (*In re Zepeda, supra,* 141 Cal.App.4th at p. 1499.) The plastic casing for the razor blades was found in the cell indicating that the alteration of the blades occurred in the cell. Zepeda was one of only two inmates who shared the cell; he denied knowledge that the

razors were present in the cell and his cellmate claimed the razors belonged to him. (*Ibid.*) The appellate court reversed the trial court's order granting the petition for writ of habeas corpus because, although this evidence would not likely be sufficient to support a criminal conviction, there was some evidence that supported the conclusion reached by the disciplinary board. (*Id.* at pp. 1499-1500.)

Just as the defendant in *Zepeda* had done, defendant Rios denied knowledge of the presence of the pruno under his bed. Defendant asserted that his cellmate acknowledged ownership of the pruno, but he did not request to have any witnesses testify at the hearing, so the only evidence presented was defendant's own statement. The documentary evidence presented to the hearing officer, however, showed that there was approximately one gallon of pruno, that it had a strong, pungent odor of fermentation obvious to anyone who entered the cell, and that it was located under defendant's bunk, making it highly unlikely defendant did not know it was there. Further, while reviewing defendant's inmate appeal, prison administrators discovered that his statement that his cellmate had access to the cell while defendant was at work was untrue: both inmates had gone to breakfast at the same time and both had reported to their respective work details immediately thereafter. Thus, the pruno had to be under defendant's bunk when he went to breakfast on the day of the cell search and it was not likely that he did not detect its presence.

In reversing defendant's discipline, the trial court engaged in speculation by concluding defendant had no alcohol on him, he did not smell of alcohol, he did not have a cup in his possession with alcohol residue, concluding there was nothing to connect

defendant to the pruno other than that he was in the cell. The court acknowledged defendant would "have to be a dummy not to know it was there. Of course, Rios knew it was there." The court went on to conclude that because defendant had no choice of cellmates, he was forced to share his cell with "the guy using the pruno," and that "we all know in the state prison system, nobody snitches on each other."

The real issue for the trial court was whether there was any evidence to support the disciplinary board's decision, not to speculate whether defendant knew about the pruno but was maintaining silence to avoid retribution. The trial court's factual findings are completely without evidentiary support in the record. If, as the court assumed, defendant knew the pruno was under his bunk, and he had access to it in an area of joint dominion and control, there was ample evidence to support the disciplinary decision. After all, even in a criminal case, defendant need not have exclusive control over the contraband to be deemed to have constructive possession of it. (See *People v. Redrick* (1961) 55 Cal.2d 282 [possession of contraband, found in a rooming house storeroom to which defendant had joint access]; see also *People v. Maese* (1980) 105 Cal.App.3d 710, [possession based on defendant being one of several occupants of a house in which contraband was found].) The trial court had no authority to reweigh the evidence or reassess the credibility of the witnesses. (*In re Rothwell, supra*, 164 Cal.App.4th at pp. 165-166.)

Under *Zepeda*, the fact showing defendant had joint dominion and control over the cell and access to the contraband under his bunk was sufficient to support the prison's finding that he had control or possession over the pruno for purposes of a rule violation, and the fact his cellmate attempted to accept responsibility did not preclude the prison

from reaching this conclusion. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment. (*People v. Tabb* (2009) 170 Cal.App.4th 1142, 1152 [and cases there cited].) There was sufficient evidence to support the decision to impose discipline. The trial court erred in reversing the discipline and restoring the behavioral credits.

DISPOSITION

The judgment is reversed. The Superior Court is directed to vacate the order reinstating 120 days of behavioral credits and restoring defendant to A 1 A status.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/Gaut
J.

We concur:

s/Hollenhorst
Acting P. J.

s/King
J.